

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3313 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

C.M. OZA

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 25/02/2000

ORAL JUDGEMENT

The petitioner has questioned the decision of the respondent, as communicated to him, vide notification of the respondent No.1, dated, 15.10.86, cancelling the promotion order of the petitioner issued by notification

of the respondent No.1, dated 10.7.73, by filing this petition under Article 226 of the Constitution of India.

A few, material and relevant, facts giving rise to the petition be stated, at the outset, to appreciate the merits of the petition and the challenge against it.

The petitioner was, originally, appointed to the post of Junior Clerk in Irrigation Department of the State of Gujarat, on, 15.3.52. Later on, he came to be promoted as Senior Clerk, in the year 1954. He was further promoted to the post of Senior Accounts Clerk in the year 1958. From 21st October, 1963, the services of the petitioner came to be placed under the District Panchayat. At the relevant time, the petitioner was on deputation in the District Panchayat. The Government of Gujarat, Panchayat and Health Department, had issued a circular dated 16th January 1968 by which options were offered to the employees working on deputation in the District Panchayat for allocation of their services in the Panchayat under the provisions of section 206 of the Gujarat Panchayats Act. Pursuant to the said resolution, the petitioner had tendered his option for allocation of his services with the District Panchayat, which was forwarded by the Executive Engineer, District Panchayat, Bhavnagar by letter dated 14.3.68. He had, also, given an undertaking fulfilling the conditions of the recruitment rules for the post of Divisional Accountant in the District Panchayat.

Since the application for option of the petitioner was not decided for long, the Executive Engineer, District Panchayat, Bhavnagar, wrote letter dated 8.9.69 to the Superintending Engineer, Irrigation Circle, Rajkot, requesting him to issue necessary orders for allocation of the service of the petitioner in the Panchayat. The authority, after considering the application, issued order dated 27.4.70, directing allocation of the services of the petitioner in the Panchayat, in exercise of powers conferred under section 206 of the Gujarat Panchayats Act, 1961.

In the light of the order dated 27.4.70, the services of the petitioner were allocated to the Panchayat and were to be governed by the provisions of Gujarat Panchayats Act, 1961 and the rules framed thereunder, and the circulars and resolutions framed from time to time by the Department. However, the District Panchayat was served with the order of the Superintending Engineer, Rajkot Circle, dated 3.8.72, by which the services of the petitioner were repatriated to the State Government and

the District Panchayat was instructed to relieve the petitioner accordingly. A copy of the said order dated 3.8.72, is produced as at Annexure B. It would be, also, interesting to mention that the District Development Officer, Bhavnagar, by his letter dated 19.10.72, intimated the Superintending Engineer, Rajkot Irrigation Circle, that he is unable to relieve the petitioner and, therefore, the order dated 3.8.72 came to be cancelled by the order dated 27.10.72.

The petitioner had given option for allocation in Panchayat service, which was granted by the authorities and therefore, order of repatriating the service was illegal, unjust, and in these circumstances, the petitioner upon inquiry came to know that no such order has been passed by the authorities and, therefore, he made representation, dated 23.6.73, addressed to the respondent No.3 requesting him that his service be treated, as Panchayat service, as per allocation order. He had also made several other representations to various authorities. Unfortunately, no reply was received and, therefore, the petitioner continued to pursue his case. Thereafter by letter of the Executive Engineer, District Panchayat, dated 28.6.73, the petitioner was compelled to relieve from the Panchayat service. The petitioner, therefore, handed over his charge as per the directions of his superiors and registered his protest against his relieving order, which is evidenced by the letter of the petitioner dated 28.6.78, a copy, whereof, is produced as at Annexure E.

Thereafter also, the petitioner made representations to the authorities. Later on, the case of the petitioner was considered and by the order dated 10.7.74, the Superintending Engineering, Rajkot Irrigation Circle, Rajkot, restored the order dated 27.4.70 directing allocation of the petitioner in the Panchayat service on permanent basis. The Superintending Engineer, however, by his later order dated 12.8.74 cancelled his earlier order dated 4.12.73.

In the aforesaid circumstances, it was contended that the petitioner was entitled to seniority and all other benefits for being considered for promotion to the post of Taluka Development Officer, Class II in Panchayat services. In the year 1983, the petitioner came to know that his case was considered for promotion and he was promoted for the post of Taluka Development Officer, Class II, in the year 1974 along with similarly situated other employees. However, the order was not served upon the petitioner. The petitioner, therefore, again made

representation dated 7.9.83 to the District Development Officer for promotion with deemed date and all consequential benefits. The petitioner was then informed that his promotion order was cancelled by the order of the respondent No.2 by passing order dated 12.3.84. The petitioner, therefore, again made representation on 1.3.85. The respondent No.1, thereafter, issued a notification dated 15th October, 1986 and cancelled the notification dated 10.7.73 promoting the petitioner to the post of Taluka Development Officer, Class II. The respondent No.2 has communicated the decision of the respondent No.1 to the respondent No.3 by his letter dated 13.11.86. That is the reason why, the petitioner has challenged the impugned order that though he was entitled to promotion to the post of TDO, Class II, and, as such, he was promoted and before his order could be communicated, it came to be cancelled without any authority.

The matter was heard on last date. After hearing, for further instructions, time was sought on behalf of the respondents and with much reluctance, adjournment was granted. Again, today, nobody has appeared for and on behalf of the respondent authorities.

In fact, no affidavit in reply is filed. No documentary evidence is produced on behalf of the respondents. Therefore, the averments and contentions advanced in the petition have remained uncontroverted. In view of such gross indifference and apathy on the part of the respondents, this Court is left with no alternative but to accept the uncontroverted averments made in the petition. The matter, though, is more than 13 years old and the respondent authorities have not taken care to file counter or any affidavit in reply, probably, knowing well, the weak case in defending the petition.

Be that as it may, even upon the legal aspects, the petitioner appears to have a very good case. The attention of this Court is invited to the provisions of section 206-A(2) of the Gujarat Panchayats Act, 1961. It is, amply, clear from the said provisions that any officer or servant who is not reallocated under sub-section (1) of section 206(A) and continues in the Panchayat service before the expiry of the said period of four years, shall on such expiry of such period, be deemed to be, finally, allocated to the Panchayat service. This provision is not considered by the authority. The impugned order cancelling the promotion given to the petitioner earlier, came to be cancelled in the teeth of sub-section (2) of section 206-A of the

Gujarat Panchayats Act, 1961. On a pointed query, the learned advocate appearing for the respondent authority could not answer and, therefore, he took time on the last occasion to seek instructions. In fact, there appears to be no reply, as stated hereinabove. There is no dispute about the fact that there was allocation of services of the petitioner to the Panchayat by the competent authority from the parent department of the Government and he continued in the services till he retired. There is no any order of reallocation of his services by the competent authority of the Panchayat to the parent department of the Government under section (1) of section 206-A of the Panchayats Act.

Obviously, therefore, factually and legally, the impugned order cancelling the promotion order and denial of the resultant service benefits to the petitioner could not be sustained, being arbitrary, illegal, unreasonable and unsustainable. The impugned order, therefore, is required to be quashed and set aside. Accordingly, it is quashed, directing the respondent authority to pass appropriate order for the benefits and entitlement to the petitioner with regard to promotion and subsequent incidental benefits, as if the order cancelling and revoking the promotion was never passed and had been non-est. Since more than 13 years period had passed, respondent No.1 is directed to pass appropriate order, immediately, in the light of the directions and observations made hereinabove, and not later than three months from the date of receipt of writ from this Court. Rule is made absolute with costs.

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(vjn)